

13-4501. Definitions

In this chapter, unless the context otherwise requires:

1. "Clinical liaison" means a mental health expert or any other individual who has experience and training in mental health or developmental disabilities and who is qualified and appointed by the court to aid in coordinating the treatment or training of individuals who are found incompetent to stand trial. If intellectual disability is an issue, the clinical liaison shall be an expert in intellectual disabilities.

2. "DANGEROUS" MEANS A PERSON WHO IS CHARGED WITH A SERIOUS OFFENSE AS DEFINED in section 13-706 OR A VIOLENT OR AGGRAVATED FELONY AS DEFINED IN SECTION 13-706 AND WHO HAS A PROPENSITY TO REOFFEND.

~~2.~~ 3. "Incompetent to stand trial" means that as a result of a mental illness, defect or disability a defendant is unable to understand the nature and object of the proceeding or to assist in the defendant's defense. In the case of a person under eighteen years of age when the issue of competency is raised, incompetent to stand trial also means a person who does not have sufficient present ability to consult with the person's lawyer with a reasonable degree of rational understanding or who does not have a rational and factual understanding of the proceedings against the person. The presence of a mental illness, defect or disability alone is not grounds for finding a defendant incompetent to stand trial.

~~3.~~ 4. "Mental health expert" means a physician who is licensed pursuant to title 32, chapter 13 or 17 or a psychologist who is licensed pursuant to title 32, chapter 19.1 and who is:

(a) Familiar with this state's competency standards and statutes.

(b) Familiar with the treatment, training and restoration programs that are available in this state.

(c) Certified by the court as meeting court developed guidelines using recognized programs or standards.

~~4.~~ 5. "Mental illness, defect or disability" means a psychiatric or neurological disorder that is evidenced by behavioral or emotional symptoms, including congenital mental conditions, conditions resulting from injury or disease and developmental disabilities as defined in section 36-551.

~~5.~~ 6. "Threat to public safety" means charged with the commission of any of the following:

(a) A crime involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument or the infliction of physical injury on another person.

(b) A dangerous crime against children pursuant to section 13-705.

(c) Two or more nondangerous felonies within a period of twenty-four months.

13-4505. Appointment of experts; costs

A. If the court determines pursuant to section 13-4503 that reasonable grounds exist for a competency examination, the court shall appoint two or more mental health experts to examine the defendant, issue a report and, if necessary, testify regarding the defendant's competency. The court, on its own motion or upon motion of any party, may order that one of the mental health experts appointed shall be a physician specializing in psychiatry and licensed pursuant to title 32, chapter 13 or 17. The state and the defendant, upon approval of the court, may stipulate to the appointment of only one expert.

B. The court may order the defendant to submit to physical, neurological or psychological examinations, if necessary, to adequately determine the defendant's mental condition.

C. IF THE DEFENDANT IS CHARGED WITH AN OFFENSE UNDER TITLE 14 OR 35.1 AND THE COUNTY REQUESTS, THE COURT MAY ORDER THE DEFENDANT BE EVALUATED AS A SEXUALLY VIOLENT PERSON AS DEFINED IN 36-3701. ONE OF THE MENTAL HEALTH EXPERTS APPOINTED BY THE COURT MUST BE A COMPETENT PROFESSIONAL PURSUANT TO 36-3701, PARAGRAPH 2. IF THE DEFENDANT IS DETERMINED BY THAT EXPERT TO BE NOT COMPETENT AND WILL NOT BE RESTORED TO COMPETENCY WITHIN 21 MONTHS, THE EXPERT SHALL THEN DETERMINE IF THE DEFENDANT MAY BE A SEXUALLY VIOLENT PERSON.

C. D. The court shall order the defendant to pay the costs of the court ordered examination, except that if the court finds the defendant is indigent or otherwise unable to pay all or any part of the costs or if the prosecution requested the examination, the court shall order the county to pay the costs of the examination or, if the case is referred by a municipal court judge, the court shall order the city to pay the costs of the examination.

D. E. This section does not prohibit any party from retaining its own expert to conduct any additional examinations at its own expense.

E.F. A person who is appointed as a mental health expert or clinical liaison is entitled to immunity, except that the mental health expert or clinical liaison may be liable for intentional, wanton or grossly negligent acts that are done in the performance of the expert's or liaison's duties.

13-4507. Examination of competency to stand trial

A. The court shall set and may change the conditions under which the examination is conducted.

B. The defense attorney shall be available to the mental health expert conducting the examination.

C. A proceeding to determine if a defendant is competent to stand trial shall not delay a judicial determination of the defendant's eligibility for pretrial release. A defendant who is otherwise entitled to pretrial release shall not be involuntarily confined or taken into custody solely because the issue of the defendant's competence to stand trial is raised

and an examination is ordered unless the court determines that the defendant's confinement is necessary for the evaluation process.

D. If a defendant is released from custody under any pretrial release provision, the court may order the defendant to appear at a designated time and place for an outpatient examination. The court may make the appearance a condition of the defendant's pretrial release.

E. The court may order that the defendant be involuntarily confined until the examination is completed if the court determines that any of the following applies:

1. The defendant will not submit to an outpatient examination as a condition of pretrial release.
2. The defendant refuses to appear for an examination.
3. An adequate examination is impossible without the confinement of the defendant.
4. The defendant is a threat to public safety [OR IS CHARGED WITH A SERIOUS OFFENSE AS DEFINED IN SECTION 13-706 OR A VIOLENT OR AGGRAVATED FELONY IN SECTION 13-706](#).

F. If a defendant is committed for an inpatient examination, the length of the commitment shall not exceed the period of time that is necessary for the examination. The commitment for examination shall not exceed thirty days, except that the commitment may be extended by fifteen days if the court finds that extraordinary circumstances exist. The county shall pay the costs of any inpatient examination ordered by the court, except that the city shall pay the costs of any inpatient examination that is ordered by a municipal court judge.

13-4509. Expert's report

A. An expert who is appointed pursuant to section 13-4505 shall submit a written report of the examination to the court within ten working days after the examination is completed. The report shall include at least the following information:

1. The name of each mental health expert who examines the defendant.
2. A description of the nature, content, extent and results of the examination and any test conducted [AND ANY INSTRUMENT OR TOOL USED TO ASSESS THE DEFENDANT'S PROPENSITY TO REOFFEND](#).
3. The facts on which the findings are based.
4. An opinion as to the competency of the defendant.

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B. If the mental health expert determines that the defendant is incompetent to stand trial, the report shall also include the following information:

1. The nature of the mental disease, defect or disability that is the cause of the incompetency.

2. The defendant's prognosis.

3. THE MENTAL DISORDER, DISEASE, DEFECT OR ANY PERSONALITY OR OTHER DISORDER WHICH MAY AFFECT THE DEFENDANT'S PROPENSITY TO REOFFEND.

~~3.~~ 4. The most appropriate form and place of treatment in this state, based on the defendant's therapeutic needs and potential threat to public safety.

4. 5. Whether the defendant is incompetent to refuse treatment and should be subject to involuntary treatment.

6. IF THE PROGNOSIS INCLUDES A DETERMINATION THAT THERE IS NO SUBSTANTIAL PROBABILITY THAT THE DEFENDANT WILL REGAIN COMPETENCY WITHIN TWENTY-ONE MONTHS AFTER THE DATE OF THE ORIGINAL FINDING OF INCOMPETENCY, WHETHER THE DEFENDANT SHOULD BE CONSIDERED DANGEROUS OR MAY BE A SEXUALLY VIOLENT PERSON.

C. If the mental health examiner determines that the defendant is currently competent by virtue of ongoing treatment with psychotropic medication, the report shall address the necessity of continuing that treatment and shall include a description of any limitations that the medication may have on competency.

13-4515. Duration of order; excluded time calculation; notice of dismissed charge or voided order; petitions

A. An order or combination of orders that is issued pursuant to section 13-4512 or 13-4514 shall not be in effect for more than twenty-one months or the maximum possible sentence the defendant could have received pursuant to section 13-702, section 13-703, section 13-704, subsection A, B, C, D or E, section 13-705, section 13-706, subsection A, section 13-708, subsection D or section 13-751 or any section for which a specific sentence is authorized, whichever is less. In making this determination the court shall not consider the sentence enhancements under section 13-703 or 13-704 for prior convictions.

B. The court shall only consider the time a defendant actually spends in a restoration to competency program when calculating the time requirements pursuant to subsection A of this section.

C. The court shall notify the prosecutor, the defense attorney, the medical supervisor and the treating facility if the charges against the defendant are dismissed or if an order is voided by the court. No charges shall be dismissed without a hearing prior to the dismissal.

D. If a defendant is discharged or released on the expiration of an order or orders issued pursuant to requires further treatment pursuant to title 36, chapter 5 or appointment of a guardian pursuant to title 14 OR REFERRAL TO A BEHAVIORAL HEALTH ADVISORY BOARD, PURSUANT TO SECTION 13-4518.

13-4517. Incompetent defendants; disposition

If the court finds that a defendant is incompetent to stand trial and that there is no substantial probability that the defendant will regain competency within twenty-one months after the date of the original finding of incompetency, any party may request that the court:

1. MAKE A FINDING THAT THE DEFENDANT IS DANGEROUS AS DEFINED IN 13-4501.

A. THE COURT SHALL HOLD A HEARING AT WHICH THE STATE MUST PROVE BY CLEAR AND CONVINCING EVIDENCE THAT THE DEFENDANT IS DANGEROUS AND THE DEFENDANT COMMITTED THE CHARGED OFFENSE. THE COURT MAY ADMIT HEARSAY EVIDENCE, INCLUDING CHAIN OF CUSTODY DOCUMENTS, LABORATORY REPORTS, AUTHENTICATION RECORDS, COURT DOCUMENTS OR OTHER PUBLIC OR BUSINESS RECORDS.

B. THE COURT MAY HOLD A HEARING PURSUANT TO THIS SUBSECTION CONCURRENTLY WITH A HEARING PURSUANT TO TITLE 36, CHAPTER 5.

~~1. 2. CONDUCT A CIVIL COMMITMENT PROCEEDING PURSUANT TO TITLE 36, CHAPTER 5 OR~~ Remand the defendant to the custody of the department of health services for the institution of civil commitment ~~SUCH proceedings pursuant to title 36, chapter 5.~~

2. 3. Appoint a guardian pursuant to title 14, chapter 5.

4. IF A DETERMINATION HAS BEEN MADE THAT THE PERSON MAY BE A SEXUALLY VIOLENT PERSON PROVIDE THE REPORT OF THAT DETERMINATION TO THE COUNTY ATTORNEY SO THAT THE COUNTY ATTORNEY MAY FILE A PETITION FOR DETENTION PURSUANT TO 36-3702.

5. REFER THE DEFENDANT TO THE BEHAVIORAL HEALTH ADVISORY BOARD PURSUANT TO SECTION 13-4518.

6. ORDER AN ASSESSMENT OF THE DEFENDANT'S ELIGIBILITY FOR PRIVATE INSURANCE OR PUBLIC BENEFITS THAT MAY BE APPLIED TO THE EXPENSES OF THE DEFENDANT'S MAINTENANCE AND TREATMENT THAT ARE MEDICALLY NECESSARY, INCLUDING FEDERAL AND STATE MEDICAID, ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION MONIES, DEVELOPMENTAL DISABILITY, SUPPLEMENTAL SECURITY INCOME, SUPPLEMENTAL SECURITY DISABILITY INCOME, MEDICARE AND REGIONAL BEHAVIORAL HEALTH ASSOCIATION MONIES.

7. THE COURT RETAINS JURISDICTION OVER THE DEFENDANT THROUGHOUT THE TIME NECESSARY TO DETERMINE THE DEFENDANT'S APPROPRIATE TREATMENT OPTIONS AND THE IMPLEMENTATION OF THE ITS TREATMENT ORDERS. ADDITIONALLY, THE COURT RETAINS JURISDICTION OVER THE DEFENDANT UNTIL ITS TREATMENT ORDERS EXPIRE OR THE DEFENDANT IS OTHERWISE DISCHARGED FROM TREATMENT BY COURT ORDER.

8. IF THE COURT HAD REMANDED THE DEFENDANT TO THE CUSTODY OF THE DEPARTMENT OF HEALTH SERVICES FOR THE INSTITUTION OF CIVIL COMMITMENT PROCEEDINGS PURSUANT TO TITLE 36, CHAPTER 5 AND THE COURT IS NOTIFIED THAT THE DEFENDANT WAS NOT EVALUATED, THE DEFENDANT SHALL BE TRANSPORTED BACK TO THE JAIL AND THE COURT MAY EXPLORE OTHER TREATMENT OPTIONS CONSISTENT WITH THIS SECTION.

3. 9. Release the defendant from custody and dismiss the charges against the defendant without prejudice.

13-4518 BEHAVIORAL HEALTH ADVISORY BOARD; DEFINITIONS; MEMBERS

A. A COUNTY MAY ESTABLISH A BEHAVIORAL HEALTH ADVISORY BOARD TO RECOMMEND TO THE COURT A CONTINUUM OF CARE TREATMENT PLAN THE DEFENDANT AND SUPERVISE THE DELIVERY OF SERVICES TO THE DEFENDANT.

B. A BEHAVIORAL HEALTH ADVISORY BOARD MAY CONSIST OF THE PRESIDING JUDGE OF THE SUPERIOR COURT OR ITS DESIGNEE, A COUNTY CLINICAL LIAISON, THE COUNTY ATTORNEY AND PUBLIC DEFENDER OR THEIR DESIGNEES, A REPRESENTATIVE OF A REGIONAL BEHAVIORAL HEALTH ASSOCIATION AND A COUNTY BEHAVIORAL HEALTH ADMINISTRATOR OR ITS DESIGNEE OR OTHERS APPOINTED BY THE COURT COUNTY ADMINISTRATOR.

C. "CONTINUUM OF CARE" MEANS AN INDIVIDUALIZED RANGE OF TREATMENT PROGRAMS AND SERVICES THAT ENCOMPASS ANY COMBINATION OF IN-PATIENT, OUT-PATIENT, RESIDENTIAL AND ACUTE CARE PLACEMENT AND TREATMENT. PROGRAMS AND SERVICES MAY INCLUDE INTENSE DAY PROGRAMS, SUPERVISED GROUP HOMES, LOCKED RESIDENTIAL PLACEMENT AND HOSPITALIZATION. THE GOAL OF AN INDIVIDUALIZED CONTINUUM OF CARE PLAN IS TO MAXIMIZE COMMUNITY RESOURCES TO BEST PROTECT AND CARE FOR THE NEEDS OF THE DEFENDANT WHILE PROTECTING THE PUBLIC.

D. THE BOARD SHALL DEVELOP A "CONTINUUM OF CARE" PLAN FOR A DEFENDANT AT THE DIRECTION OF THE COURT. THE COURT MUST APPROVE THE PLAN AND REQUIRE THE BOARD TO REPORT THE DEFENDANT'S PROGRESS AT WHATEVER FREQUENCY THE COURT DETERMINES BUT NO LESS THAN EVERY 180 DAYS DURING THE FIRST YEAR OF TREATMENT AND EVERY 360 DAYS THEREAFTER. THE COURT MAY SET ADDITIONAL REVIEW HEARINGS AT ITS DISCRETION. AN INDIVIDUALIZED CONTINUUM OF CARE PLAN REMAINS IN EFFECT UNTIL TERMINATED BY THE COURT OR THE EXPIRATION OF THE PRESUMPTIVE SENTENCE THE DEFENDANT COULD HAVE RECEIVED HAD HE BEEN CONVICTED AS CHARGED.

E. AT ANY HEARING HELD PURSUANT TO SECTION D THE DEFENDANT MAY SEEK TO ALTER HIS TREATMENT PLAN OR BE DISCHARGED FROM TREATMENT. THE DEFENDANT MUST PROVIDE NOTICE TO THE COURT AND THE COUNTY ATTORNEY OF HIS INTENTION TO SEEK DISCHARGE OR ALTERATION OF HIS PLAN.

F. THE BOARD MAY ALTER A DEFENDANT'S INDIVIDUALIZED PLAN TO MEET ANY ACUTE TREATMENT OR OTHER NEEDS, WITHOUT COURT ORDER, BUT MUST PROVIDE NOTICE TO THE COURT OF ANY ALTERATION LASTING LONGER THAN THIRTY DAYS. THE COURT SHALL SET A HEARING AND NOTICE OF

THE HEARING SHALL BE GIVEN TO THE COUNTY ATTORNEY. THE DEFENDANT SHALL BE PROVIDED WITH COUNSEL. THE COURT SHALL RECEIVE ANY RELEVANT INFORMATION FROM THE BOARD OR THE PARTIES NECESSARY TO REVISE OR MAINTAIN THE DEFENDANT’S INDIVIDUALIZED CONTINUUM OF CARE PLAN.

G. NO DEFENDANT MAY BE DISCHARGED FROM AN INDIVIDUALIZED CONTINUUM OF CARE TREATMENT PLAN WITHOUT ORDER OF THE COURT, AFTER A HEARING. THE BOARD MAY REQUEST A HEARING AT ANY TIME AND MUST PROVIDE NOTICE TO THE COUNTY ATTORNEY SETTING FORTH THE REASON FOR THE REQUEST. THE COUNTY ATTORNEY MAY ATTEND AND PRESENT EVIDENCE OR ARGUMENT.

H. A COUNTY MAY CONTRACT WITH A BEHAVIORAL HEALTH ADVISORY BOARD IN ANOTHER COUNTY TO PROVIDE CONTINUUM OF CARE TREATMENT SERVICES TO PERSONS FOR WHOM THE SUPERIOR COURT HAS RETAINED JURISDICTION PURSUANT TO 13-4517.